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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,847	12/09/1999	TOAN TRINH	7114	8139

27752 7590 11/10/2005

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EXAMINER

MOORE, MARGARET G

ART UNIT PAPER NUMBER

1712

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/457,847

Applicant(s)

TRINH ET AL.

Examiner

Margaret G. Moore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 14, 15, 33 to 42, 45, 46, 48 to 50, 56, 60 to 66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 33 to 42, 45, 46, 48 to 50, 56, 60 to 66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 14, 15, 33 to 42, 45, 46, 49, 50, 56 and 60 to 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al. in view of Jellinek for reasons of record.

This rejection is consistent with that noted in paragraph 4 of the previous office action and as such the rationale will not be repeated. Applicants' traversal is not persuasive. The Examiner does not agree with applicants' position that the composition of example H is likely to be acidic, particularly because she does not agree that one can simply assume that the Sandoperm ME was intended to be Sandoperm MEJ liq or MEW liq. To the Examiner, a better assumption would be that the specification of Vogel et al. is correct and that the Sandoperm ME product is no longer available. In lack of any specific evidence of a pH for this product, one can only go with what is known for a fact and that is that Sandoperm ME is an amino functional siloxane and such siloxanes are generally held to be basic. At the least the skilled artisan would have found such an assumption to be reasonable. In addition the Examiner notes that patentees are not limited to that one example. As noted in the previous office action, the composition of Vogel et al. can contain numerous compounds which will lend basic characteristics to the prior art. Thus this rejection is maintained.

3. Claims 14, 15, 33 to 38, 42, 45, 46, 49, 50, 56 and 62 to 66 are rejected under 35 USC 103(a) as being unpatentable over Jellinek in view of Vogel et al. for reasons of record.

This rejection is consistent with that noted in paragraph 4 of the previous office action and as such this will not be repeated. Applicants' traversal is not persuasive. Applicants argue that there is no motivation to combine the references. The Examiner disagrees, as she provided motivation in the previous office action. That is, one having ordinary skill in the art wishing to apply the composition of Jellinek by spraying it onto a fabric would have been motivated to look to other similar products to see how they are

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applied when sprayed. Such motivation would lead the skilled artisan to look to the teachings in Vogel et al. and thus one would arrive at a method of spraying that results in a particle diameter as claimed. Arguments drawn to pH of the compositions do not appear to have any affect on this combination because one would not consider the pH of a composition when determining an operable means of spraying.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-272-1090. The examiner can normally be reached on Monday to Wednesday and Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Margaret G. Moore  
Primary Examiner  
Art Unit 1712

mgm  
11/8/05